BEFORE THE

Interstate Commerce Commission

CEMENT

INFORMAL PRESENTATION IN THE MATTER OF DISCRIMINATION AGAINST THE CITY AND PORT OF PHILADELPHIA, IN RAILROAD FREIGHT RATES FOR TRANSPORTATION OF PORTLAND CEMENT.

FRANK L. NEALL.
WARD W. PIERSON.

PHILADELPHIA, December 19, 1908:

Publicly declared policy of New York Trunk Line Railroads.

New York Central & Hudson River Railroad Co.
West Shore Railroad Co.
Lehigh Valley Railroad Co.
Erie Railroad Co.
Delaware, Lackawanna & Western R. R. Co.

Extract from Brief of Counsel, in I. C. C. Case No. 1487 (Sugar Case), page 9.

"The result is that the carriers at New York, in order to compete with the carriers at Philadelphia in so competitive a traffic as sugar, must bear the expense of the delivery of such traffic to their terminals. With reference to most commodities, we have found that if we bear the lighterage expense, we have reasonably equalized the manufacturers of the two places. It has been found, however, that with respect to sugar such concession would be insufficient to protect the New York sugar interests in competition with the Philadelphia refineries."

APPLICATION OF ABOVE POLICY TO PORTLAND CEMENT

Freight Rate—Northampton to Jersey City (95 miles) per ton,		$ .80
" " Northampton to Philadelphia (74 miles) " "		1.35
Discrimination against Philadelphia, " "		.55

Contract for 4,500,000 bbls. cement (900,000 tons) for use in construction of Panama Canal, placed with Atlas Portland Cement Co., Northampton, Pa., by U. S. Government, to be shipped via Jersey City.

At 55c. per ton **discrimination** against Philadelphia on this **one contract** amounts to **$495,000.00**

INDEX

BEFORE THE

Interstate Commerce Commission

INFORMAL PRESENTATION IN THE MATTER OF DISCRIMINATION AGAINST THE CITY AND PORT OF PHILADELPHIA IN RAILROAD FREIGHT RATES FOR TRANSPORTATION OF PORTLAND CEMENT.

The purpose of the following presentation is threefold:

First. To respectfully direct the attention of your Honorable Body to discrimination between localities, preferential freight rates, rebating, and other long continued illegal practices of certain railroads in connection with the transportation for local consumption, coastwise distribution, and export, of Portland Cement, from the great producing center of said commodity, in Northeastern Pennsylvania, to the Atlantic seaboard.

Second. To respectfully urge your Honorable Body to make prompt inquiry to discover the underlying cause or causes of the said various illegal practices on the part of certain railroads, and to make such order or orders, or to institute such proceedings, as shall be necessary to bring effective relief to the City and Port of Philadelphia, which for a long time has suffered and is now suffering from the said practices, and more particularly with respect to preferential and discriminatory railroad freight rates for the transportation of Pennsylvania Portland Cement as aforesaid.

Third. To respectfully urge your Honorable Body, while considering the situation of inland freight rates on Portland Cement, to bear in mind the astounding declaration of policy and the practical application thereof, deliberately asserted in

the brief of the eminent counsel of the New York Central and Hudson River Railroad Co., the West Shore Railroad Co., the Lehigh Valley Railroad Co., the Erie Railroad Co., and the Delaware, Lackawanna and Western Railroad Co., In the Matter of Allowances for Transfer of Sugar (case No. 1487) which was submitted to your Honorable Body, and wherein it was stated, at page 9, that:

> "The result is that the carriers at New York, in "order to compete with the carriers at Philadelphia in so "competitive a traffic as sugar, must bear the expense of "the delivery of such traffic to their terminals. With "reference to most commodities, we have found that if "we bear the lighterage expense we have reasonably "equalized the manufacturers of the two places. It has "been found, however, that with respect to sugar such "concession would be insufficient to protect the New "York sugar interests in competition with the Phila-"delphia refineries."

And also at page 31:

> "The Commission has repeatedly ruled that it will "not by an adjustment of rates or facilities offered by a "carrier undertake to equalize the natural advantages of "location."

GENERAL STATEMENT.

During 1907 the United States produced 50,000,000 barrels of Portland Cement. Approximately 40 per cent. of this amount was produced in the State of Pennsylvania, within say 75 miles of the Port of Philadelphia.

The largest deposits in the world of the cement rock from which the celebrated Portland Cement is manufactured, are located in the State of Pennsylvania, principally in Lehigh and Northampton Counties.

Northampton, Pa., and vicinity ("the Lehigh District") may be called the commercial center of the great Portland Cement producing industry of the United States. The Atlas Portland Cement Co. (chief mills at Northampton) has an annual output of 14,000,000 barrels. It was recently awarded a contract by the Federal Government of 4,500,000 barrels (900,000 tons) deliverable at

Jersey City, or Hoboken, N. J. (Port of New York) during the years 1909-1910, for use in the construction of the Panama Canal.

The distance from Northampton, Pa., to Philadelphia is say 74 miles.

The distance from Northampton, Pa., to Jersey City is say 95 miles.

The port from which distribution of Portland Cement is made to points along the Atlantic Seaboard, to the Isthmus of Panama, and to various foreign ports and places, is not the Port of Philadelphia—the nearest port—but Jersey City, and Hoboken, [Port of New York].

Portland Cement from Northampton is loaded into cars at the factory in cotton or paper bags, in wooden barrels, or in bulk, and switched a distance of say one-half mile by the Northampton & Bath Railroad (controlled by the Atlas Portland Cement Co. interests), onto the tracks of the Central Railroad of New Jersey (controlled by the Philadelphia & Reading Railway Co.). From this point, if destined to Jersey City in the Port of New York, the cement may be carried by the Central Railroad of New Jersey over its own tracks—a distance of say 95 miles. This is the shortest route to the Port of New York. The distance by the Erie Railroad from Northampton to Jersey City is 125 miles. If destined to Philadelphia, the cement may be carried by the Central Railroad of New Jersey from Northampton to Allentown, Pa., a distance of 6 miles—and balance of the way by the Philadelphia & Reading Railway—a distance of 68 miles, making the total distance 74 miles. This is the shortest route to Philadelphia. The distance from Northampton to Phildelphia via Martin's Creek and the Pennsylvania Railroad is 102 miles.

(Note:—Freight movements from Northampton, etc., to or via Philadelphia are made either by intrastate, or interstate routes.) [See **Exhibit A.**]

Rail-Road-'Rithmetic.—Portland Cement, transported by the Pennsylvania Railroad, from Martin's Creek to Atlantic City, N. J., must move via Philadelphia.

Distance, Martin's Creek to Philadelphia, 90 miles, rate	$1.35 per ton.
Distance, Philadelphia to Atlantic City, 60 miles, rate.....	2.40 per ton.
Total distance, Martin's Creek to Atlantic City, 150 miles, rate.....	2.00 per ton.

90 miles + 60 miles = 150 miles.
$1.35 rate + $2.40 rate = $2.00 rate.

Portland Cement, transported by the Pennylvania Railroad, from Martin's Creek, Pa., to Jersey City, must move via Trenton, N. J.

Distance, Martin's Creek to Trenton, 57 miles, rate	$1.30 per ton.
Add another 57 miles (distance Trenton to Jersey City), and the rate for entire distance, 114 miles is reduced to.....	80c. per ton.

57 miles + 57 miles = 114 miles.
$1.30 rate + $1.30 rate = 80c. rate.

Portland Cement transported by the Pennsylvania Railroad from Martin's Creek, Pa., to Philadelphia moves via Trenton, N. J. The distance is 90 miles. The rate charged is $1.35 per ton. Two-thirds of the route is identical with that followed by cement destined to Jersey City. **A comparison of the Pennsylvania Railroad rate of 80c. per ton for a distance of 114 miles, when the destination is Jersey City, with the Pennsylvania Railroad rate of $1.35 per ton for a distance of 90 miles, when the destination is Philadelphia, raises a serious doubt as to the sincerity of the statement that the Pennsylvania Railroad has endeavored to build up the commerce of the Port of Philadelphia.** [See **Exhibit B.**]

FOUR POINTS PRESENTED FOR CONSIDERATION:

The subject matter which it is our purpose to present for the consideration of your Honorable Body groups itself naturally under four main headings:

Point I.—The discriminatory Northampton-New York inland freight rate on Portland Cement, of from 25c. to 55c. per ton under the Northampton-Philadelphia freight rate, virtually places a tax of that amount upon every ton of Portland Cement used in construction work in Philadelphia.

Point II.—The discriminatory Northampton-New York inland freight rate on Portland Cement, of from 25c. to 55c. per ton under the Northampton-Philadelphia freight rate, has resulted in eliminating the Port of Philadelphia as a distributing center for Pennsylvania Portland Cement for export and for coastwise delivery.

Point III.—Accessorial allowances to favored Portland Cement interests made at the Port of New York are a subterfuge whereby the payment of a rebate is accomplished.

Point IV.—The policy of New York Trunk Line Railroads as voluntarily and publicly declared by their eminent Counsel (see Brief In the Matter of Allowances for Transfer of Sugar, I. C. C. Case No. 1487, page 9), made operative by the manipulation of accessorials or terminal allowances, virtually places the treasuries of these Railroad Companies at the disposal of manufacturers and merchants of the Port of New York. This policy is carried out in respect to Pennsylvania Portland Cement traffic, by granting discriminatory rates of freight upon cement destined to the Port of New York, and also by accessorial allowances for lighterage at the Port of New York. These singly, or taken together, more than neutralize the natural advantages of the Port of Philadelphia.

POINT I.

THE DISCRIMINATORY NORTHAMPTON-NEW YORK INLAND FREIGHT RATE ON PORTLAND CEMENT, OF FROM 25c. TO 55c. PER TON, UNDER THE NORTHAMPTON-PHILADELPHIA FREIGHT RATE, VIRTUALLY PLACES A TAX OF THAT AMOUNT UPON EVERY TON OF PORTLAND CEMENT USED IN CONSTRUCTION WORK IN PHILADELPHIA.

Rates.—The published rate of freight on Portland Cement from Northampton to New York City is $1.40 per ton of 2000 pounds. This includes a lighterage allowance of 3c. per 100 pounds, or 60c. per ton.

The published rate of freight on Portland Cement from Northampton to Jersey City is 80c. per ton (C. C. R. of N. J. —I. C. C. No. 9543).

The published rate of freight on Portland Cement from Northampton to Philadelphia is $1.35 per ton (C. R. R. of N. J., I. C. C. No. 9573).

The circumstances and conditions with respect to the transportation of Portland Cement from Northampton to either Philadelphia or Jersey City, except as to distances, are substantially identical. The carriers in several instances are practically the same.

Local Effect of Discrimination.—Probably not a ton of cement has been delivered in Philadelphia for years by any railroad unless at a cost of 55 cents per ton more to the Philadelphia consumer than was currently charged the consumer receiving the identical brand of cement at Jersey City, or Hoboken. **The discrimination against Philadelphia is made more apparent by a percentage comparison of rates and distances which shows that for a distance 32 per cent. less, a 70 per cent. greater rate of freight is charged.**

While it is not possible to measure in money damages the effect of such discrimination, nevertheless the enormity of the injury will be obvious from the following exposition:

In construction work, the price of Portland Cement is of great importance to the builder. Three factors determine the price to him. The first factor is the cost of manufactured cement at the point of production, the cement mills. The second factor is the cost of the package in which the cement is shipped, whether it be in cotton or paper bags, wooden barrels, or in bulk. The third factor is the inland freight. In every case the first two factors are fixed quantities. The varying quantity is the freight. It is too patent to require demonstration that a community paying a high rate of freight on its cement, pays much more heavily for all of its construction work, than does the community enjoying a low freight rate.

Merchants, manufacturers, and builders of Philadelphia are compelled to pay discriminatory railroad freight rates on cement.

This freight discrimination may be presented as follows:

1 ton to Jersey City (114 miles) costs 80 cents, or 7 mills per ton per mile for freight.

1 ton to Philadelphia (90 miles) costs $1.35, or 15 mills per ton per mile for freight.

In both cases, from

Martin's Creek to Trenton .....57 miles.

Distance from Trenton to Jersey City, 57 miles.

Distance from Trenton to Philadelphia, 33 miles.

WHY is the rate of freight per ton per mile from Martin's Creek, Pa., to Philadelphia, Pa., one hundred and fifteen (115) per cent. **MORE** than to Jersey City (Port of New York)? Such discrimination imposes a blighting handicap on a Pennsylvania Product, of a Pennsylvania corporation, to Pennsylvania consumers, at a Pennsylvania Port, by a Pennsylvania Railroad.

The cement business is yet in its infancy.

The practical effect of this discrimination has been to engraft a permanent fixed charge upon the City of Philadelphia and its inhabitants for all time. In the construction

of the Philadelphia subway alone, the freight discrimination cost the contractors and builders $50,000. This loss of $50,000 capitalized at 6 per cent. is equivalent to an irredeemable ground rent of $3,000 per annum. Conditions which permit capitalized discrimination of this character, growing out of inter-railway understandings, are matters for your Honorable Body to thoroughly examine. The serious economic transportation waste involved, and now borne by shippers and consumers of many and varied commodities, is a waste which ought to be checked.

POINT II.

THE DISCRIMINATORY NORTHAMPTON-NEW YORK INLAND FREIGHT RATE ON PORTLAND CEMENT OF FROM 25 TO 55 CENTS PER TON UNDER THE NORTHAMPTON-PHILADELPHIA FREIGHT RATE, HAS RESULTED IN ELIMINATING THE PORT OF PHILADELPHIA AS A DISTRIBUTING CENTER FOR PENNSYLVANIA PORTLAND CEMENT FOR EXPORT AND FOR COASTWISE DELIVERY.

The natural route for Pennsylvania Portland Cement destined for export and for ultimate distribution along much of the Atlantic seaboard is not by way of the Port of New York, the longer route, but by way of the Port of Philadelphia, the shorter route.

Why does so important an article as Portland Cement not move by way of Philadelphia? There is but one answer. Certain manufacturers with ability to choose either of two ports have, with the deliberate connivance of the railroads, put up inland freight rate barriers against a locality (Philadelphia) favorably situated, and established specially low rates to overcome the natural disadvantages of the other locality (New York).

So important an element is the rate of inland freight in the ultimate cost of a commodity as delivered to the consumer,

that, in the recent testimony in the sugar cases at Washington, before the Interstate Commerce Commission, unchallenged experts testified under oath "that 2c. per 100 pounds, 1c. per 100 lbs., and even ½c. per 100 pounds," in the inland rate of freight on the manufactured product—sugar—would in itself determine the port on the Atlantic seaboard at which the imported sugar would be refined. Manufactured sugar at the refineries in New York City, or in Philadelphia sells for about $100 per ton. Portland Cement, at the mills in Pennsylvania, sells for about $5 per ton. It must be evident, even to the ordinary observer, that the less valuable the article the greater is the effect of the inland freight factor involved in its distribution. In the case of an inexpensive product an unduly high rate of freight will inevitably result in fixing a prohibitory price, thus restricting the area within which the manufactured product can be profitably distributed.

The Interstate Commerce Commission has repeatedly ruled that it will not, by an attempted adjustment of rates or facilities offered by carriers, undertake to equalize the natural advantages of location. (*Enterprise Mfg. Co. vs. Ga. Ry. Co., 12 I. C. C. R., 456.*) Yet certain trunk line railroads have deliberately and avowedly undertaken to overturn the natural law of trade and commerce—that **a commodity should move by the most direct and most economic route.** Since the Interstate Commerce Commission—a judicial body of highly trained specialists—has wisely refused to undertake to equalize natural advantages of location, ought not transportation interests be restrained from undertaking to equalize the natural advantages of location? Restraint of this character would prevent transportation interests from subverting the natural laws of trade and commerce, and from forcing the general public to bear the burden of the resultant economic waste.

Effect of Discrimination on Exports.—Substantially not a ton of Portland cement has arrived in recent years in Philadelphia to be forwarded to its ultimate destination by water. Instead of being shipped from the point of production via Philadelphia (the shorter route) to its final destination, cement is forwarded via Jersey City, or Hoboken in the Port

of New York (the longer route) at an inland freight rate of 80c. per ton, OR 55c. PER TON LESS than the inland freight rate charged via the Port of Philadelphia. A daily increasing volume of cement is passing over the wharves at Jersey City, and Hoboken, while through the manipulation of inland freight rates Philadelphia is denied any of this traffic and any of the resultant activities. Is it not ridiculous to expect that a single ton of cement, for other than local consumption, will reach Philadelphia when the rate of freight to the Port of New York by several railroads is 55c. PER TON LESS than the rate simultaneously charged for delivery of identical brands of cement at the wharves in the Port of Philadelphia?

When the National Government recently entered into contract with the Atlas Portland Cement Co. for 4,500,000 barrels of cement, for use in constructing the Panama Canal, it was presumable that a considerable share of this amount would move via the Port of Philadelphia, because Philadelphia is nearer the place of manufacture, and also nearer the point of ultimate delivery. Following the general assumption that Jersey City, and Hoboken take the Northampton-New York City inland freight rate of $1.40 per ton, it was at once pointed out by representatives from the State of Pennsylvania that by shipping the entire amount of the contract via Philadelphia at $1.35 per ton, the Government would save $45,000. But no portion of the cement specified in this contract has been ordered to be shipped via Philadelphia. On the contrary, it was contracted to be shipped via Jersey City and Hoboken.

Inquiry developed that the published freight rate of $1.40 per ton to New York City included an allowance for lighterage of 60c. per ton. Also it was learned that Jersey City, and Hoboken do not take the New York City freight rate, as was supposed, but take an 80c. per ton rate. When this 80c. rate was uncovered, the reason for sending the cement by the long route instead of via Philadelphia at once became obvious. To ship the 4,500,000 barrels (900,000 tons) of cement to Panama via Philadelphia would have cost the Government **$495,000** more than to ship by the longer indirect route selected. This

is the measure of a discrimination against Philadelphia, in a single instance.

To make the complete shipment of 4,500,000 barrels of cement within the period of two years as specified, it will be necessary to ship 36,000 tons per month. That is to say, a ship loaded with 6,000 tons of cement will leave a port of transshipment every five days for Panama, and all the attendant advantages flowing from wages paid for labor employed in transshipment, sale of ship supplies, bunker coals, etc., etc., will accrue to local interests. But by preferential manipulation of freight rates in favor of Jersey City, and Hoboken, Philadelphia is at present barred from participation in any of the advantages which will accrue from the shipment of this great quantity of a Pennsylvania product. Nor can it be properly objected that Philadelphia does not possess adequate facilities for handling such business. The terminals of the railroads in Philadelphia, where cargo like cement would naturally be handled, are commodious, and fully equal in economic facilities to any possessed at Jersey City, or Hoboken by railroads centering at those points. Also the facilities for handling vessels of deep draft are at least equal, and probably cheaper, in Philadelphia than in Jersey City, or Hoboken.

If the railroad rate of freight of $1.35 per ton from Northampton to Philadelphia (74 miles) is a fair rate—and there is no reason to presume that it is not—then the rate from Northampton to the Port of New York (95 miles), on a mileage basis, ought to be $1.95 per ton. Or, to put it in another way, if 80c. per ton is a fair rate of freight from Northampton to Jersey City, and Hoboken, for a distance of 95 miles—and there is no reason to presume that it is not—then a fair rate of freight, on a mileage basis, from Northampton to Philadelphia—a distance of 74 miles—ought to be 60c. per ton. [See **Exhibit B.**]

We do not offer to question the assertion that certain railroads are facing deficits. We do not raise the issue that railroad freight rates in general are too low or too high; nor do we assert that railroad freight rates should be computed solely upon a mileage basis. But we do assert that one community should not be taxed by the imposition of unduly high

inland freight rates to build up another community less advantageously placed. The understanding or agreement now in vogue between certain railroads which affords preferential rates to Jersey City, and Hoboken, as against Philadelphia, is unjustifiable. The outcome of the understanding or agreement involves a tremendous economic waste. The communities compelled to bear the burden of this economic waste must have relief.

The present status of the Portland Cement contract for the Panama Canal makes the Federal Government, as well as the Port of Philadelphia, vitally interested financially in the reasonableness of any inland freight rate charged.

The present arrangement whereby discrimination is practiced through the medium of preferential freight rates between localities involves an economic waste for which no excuse can be offered.

We believe that such conditions as are herein set forth are contrary to the spirit and letter of the Interstate Commerce Laws, as well as against common fairness and justice, and ought to be brought to an abrupt end.

POINT III.

ACCESSORIAL ALLOWANCES TO FAVORED PORTLAND CEMENT INTERESTS MADE AT THE PORT OF NEW YORK ARE A SUBTERFUGE WHEREBY THE PAYMENT OF A REBATE IS ACCOMPLISHED.

In the decision recently rendered by the Interstate Commerce Commission "In the Matter of Allowances for Transfer of Sugar," 14 I. C. C. R., 619, the Commission said:

> "It is not a part of the carrier's duty to bear the expense of transfer of goods from the shipper to the carrier. . . . Such is not the law, and the first to resist an attempt to impose such duty upon the carriers would be the carriers themselves. Within the present year this Commission has decided at least two cases in favor of carriers involved in this proceeding and has held that the delivery of goods to a carrier and the receipt of goods

> from a carrier are duties devolving upon the shipper, for which the carrier cannot be compelled to pay. . . . For carriers to undertake to compensate shippers for performing services which the shippers are legally bound to do for themselves is for the carriers to violate the act. . . . The transfer allowance here considered is, by every test afforded by the law, a rebate. It seems to be given with a purpose of reducing the rates for transportation of sugar from New York, being called a 'transfer allowance' to conceal the fact that such reduction is made." [See **Exhibit D.**]

This decision justifies the position taken by the undersigned in their brief filed in the sugar case, namely, that an allowance out of the published rate of freight as alleged compensation for cost of delivery of goods to, or receipt of goods from, a shipper at a point not on the line of the company's railroad or at one of its bona fide stations [say in New York or Brooklyn], is an accessorial allowance intended to reduce the rate of freight, and is therefore a rebate.

Even if we should concede, which we do not, that in some cases a lighterage allowance might be proper and legitimate, still, if the amount of the allowance is greater than the actual cost of the service rendered, or does not reasonably measure the value of the service rendered, the sum in excess of such cost or value is a rebate.

The published freight rate on Portland Cement from Northampton to New York *City* ($1.40 ton) seems to serve no other effective purpose than to act as a blind. Ostensibly Philadelphia enjoys a differential of 5c. per ton under the New York *City* rate. Actually New York *City* enjoys a differential under the Philadelphia rate of 25c. per ton. This can be readily demonstrated.

The rate of $1.40 per ton to New York City includes lighterage in the harbor, assumed on Eastbound traffic to be 3c. per 100 pounds or 60c. per ton. Ordinarily neither consignors nor consignees in New York City make use of the $1.40 per ton rate with its accompanying lighterage, but instead they take the cement directly from the railroad terminals in Jersey City, or Hoboken, largely in their own lighters. The reason for this procedure is that the actual

cost of lighterage of cement from Jersey City to points around New York Harbor is not 60c. per ton. On the contrary, it is approximately 30c. per ton. Therefore, the freight rate in actual operation from Northampton to New York City is not $1.40 per ton; it is 80c. per ton (Northampton—Jersey City) plus any actual lighterage cost, say not exceeding 30c. per ton, making the actual rate on cement Northampton-New York City $1.10 or less per ton. Thus consignees of cement in New York City enjoy a net actual rate of $1.10 per ton as against $1.35 per ton charged Philadelphia consignees. In other words, there is a differential in *favor* of New York City under Philadelphia, of 25c. per ton. It is therefore clear that the rate of $1.40 per ton to New York City is only a blind, as alleged, to cover a discriminatory freight rate against Philadelphia.

Whenever a consignee or consignor receives an accessorial allowance of 60c. per ton for services which in reality cost only 30c. per ton, then to the extent of the difference is a rebate paid.

It is apparent from a comparison of the freight rates of the several railroads serving the Lehigh District, that there is an understanding that Portland Cement for ultimate distribution at seaboard via water routes shall not move to Philadelphia, but shall be concentrated at Jersey City, Hoboken, and New York Harbor.

The ease with which such understandings may be carried into effect may be inferred from the subjoined statement as to the inter-relations in the Directorates of the Atlas Portland Cement Co. and various Railroad Corporations. [See **Exhibit C.**]

The Delaware, Lackawanna & Western Railroad, the Lehigh Valley Railroad, the Lehigh & Hudson River Railroad, the Central Railroad of New Jersey, the Erie Railroad, the Pennsylvania Railroad, the Philadelphia & Reading Railway and the Lehigh & New England Railroad all serve the cement regions of Pennsylvania. The works of the Atlas Portland Cement Co. at Northampton are directly accessible only over the tracks of the Northampton & Bath Railroad Co., which is owned by the Atlas Portland Cement interests.

It will be seen [**Exhibit C**] that Mr. J. Rogers Maxwell is President of the Atlas Portland Cement Co. He is President of the Northampton & Bath Railroad. He is Chairman of the Executive Committee of the Central Railroad of New Jersey. (He was for many years President of that Company.) Mr. Maxwell is a Director of the Lehigh and Hudson River Railroad, and also a Director of the Delaware, Lackawanna and Western Railroad. Beside having on the Board of the Central Railroad of New Jersey its President, the Atlas Portland Cement Co. has additional representation in the person of Mr. George F. Baker. Mr. Baker is a Director of the Delaware, Lackawanna and Western Railroad, and also a Director of the Lehigh Valley Railroad. Mr. Lewis A. Riley, a Director of the Atlas Portland Cement Co., is President of the Lehigh and Hudson River Railway, a Director of the Lehigh Coal and Navigation Co., and also a Director of the Lehigh and New England Railroad Co.

The foregoing demonstrates how intimately these various interests in the Lehigh District are linked together. By understandings and agreements these interests are doubtless able to dictate routes and rates, and to carry out any and all understandings with respect to the transportation and distribution of Pennsylvania Portland Cement.

The above disclosed intimacy of relationship between carriers and producers suggests, among other things, that the rate of freight charged on cement by the Northampton and Bath Railroad Company (controlled by the Atlas Portland Cement Co. interests) ought to be closely scrutinized, as a rebate may readily be concealed in an excessive proportion of the through rate, allowed to this Company.

The Northampton and Bath Railroad Co. receives $2.50 per car—say, ½c. per 100 pounds, or one-eighth of the entire rate of freight Northampton to Jersey City—for switching its cars, say, one-half mile to the tracks of the Central Railroad of New Jersey.

Under the conditions recited, would it be surprising if preferential rates, discrimination, and disguised rebates should be found to exist? If, in the past, agreements or understandings have been entered into as to sugar, petroleum,

passengers, live stock, coal, grain and immigrants, why not as to cement?

In the above connection, the following statements are submitted as self-evident:

If the published rate of freight on one commodity contains accessorial allowances not granted to another commodity, there is discrimination between different commodities.

If the published rate of freight on one commodity contains allowances which make the net rate too low, and carriers are obliged to recoup themselves by increasing rates of freight on other commodities, there is discrimination between different classes of traffic.

If the carriers serving one locality make allowances out of the published freight rate, and the carriers serving another locality do not make similar allowances, preferential and discriminatory rates result, and there is discrimination between localities.

Accessorial allowances, or charges, or expenses included as an integral part of a freight rate, or paid out of a freight rate, not only permit but actually induce discrimination.

POINT IV.

THE POLICY OF NEW YORK TRUNK LINE RAILROADS, AS VOLUNTARILY AND PUBLICLY DECLARED BY THEIR EMINENT COUNSEL (see brief In the Matter of Allowances for Transfer of Sugar, I. C. C. case 1487, page 9), MADE OPERATIVE BY THE MANIPULATION OF ACCESSORIALS OR TERMINAL ALLOWANCES VIRTUALLY PLACES THE TREASURIES OF THESE RAILROAD COMPANIES AT THE DISPOSAL OF MANUFACTURERS AND MERCHANTS OF THE PORT OF NEW YORK. THIS POLICY IS CARRIED OUT IN RESPECT TO PENNSYLVANIA PORTLAND CEMENT TRAFFIC BY GRANTING DISCRIMINATORY RATES OF FREIGHT UPON CEMENT DESTINED TO THE PORT OF NEW YORK, AND ALSO BY ACCESSORIAL ALLOWANCES FOR LIGHTERAGE AT THE PORT OF NEW YORK. THESE SINGLY OR TAKEN TOGETHER MORE THAN NEUTRALIZE THE NATURAL ADVANTAGES OF THE PORT OF PHILADELPHIA.

It was positively stated by the eminent counsel of certain trunk line railroads "In the Matter of Allowances for Transfer of Sugar" (No. 1487) that:

> (Page 9.) "The result is that the carriers at New York, in order to compete with the carriers at Philadelphia in so competitive a traffic as sugar, must bear the expense of the delivery of such traffic to their terminals. With reference to most commodities, we have found that if we bear the lighterage expense we have reasonably equalized the manufacturers of the two places. It has been found, however, that with respect to sugar such concession would be insufficient to protect the New York sugar interests in competition with the Philadelphia refineries."

It must be clear from the statements made in our presentation that railroads have also adopted the above creed in matters relating to the transportation of Portland Cement from Northampton to the Port of New York.

The economic waste due to the diversion of traffic via more expensive routes is first a charge upon the railroad income. By the railroad the loss thus caused is carried on to shippers of various commodities in various communities, and reappears in unduly high rates of freight to ports and places more advantageously situated. Discrimination of this character capitalized is the burden borne by Philadelphia, because of preferential freight rates on Portland Cement, and on other commodities. It is from a continuance of this burden that relief is asked at the hands of your Honorable Body.

Summary.—Geographically, economically, and equitably, Philadelphia should be the center of distribution for an immense volume of Pennsylvania Portland Cement Philadelphia is the nearest seaboard point to the mills. It is 21 miles nearer to the center of the "Lehigh District" than is Jersey City, which is the second nearest seaboard point. The grades are easy, and the facilities for handling this commodity in Philadelphia are fully as economical as those in any other port. Yet it is found that this commodity does not come to Philadelphia for distribution at all, and that a ton of cement costs 55c. more to Philadelphia consumers who must use it, than it costs the consumer in Jersey City or vicinity, and say 25c. more than it costs the consumer in New York City. There are no legitimate grounds for the existence of such a state of affairs.

The docks at Jersey City, and Hoboken (Port of New York) are constantly availed of for the transshipment of Portland Cement from the inland carrier to the ocean carrier with all the activities that this implies, while not a ton of cement comes through Philadelphia to be forwarded to its ultimate destination by water.

Jersey City, and Hoboken are the present points of delivery by railroad for Portland Cement intended for coastwise distribution and for foreign export. The cost to the consumer is based upon an inland freight rate of 80c. per ton. Under present conditions, if cement intended for coastwise distribu-

tion or export were to move via Philadelphia, the cost to the consumer would be based on an inland freight rate of $1.35 per ton.

Philadelphia should not suffer under the burden of a discriminatory freight rate when her natural facilities are unexcelled.

New York City enjoys an actual differential freight rate on Portland Cement under Philadelphia of not less than 25c. per ton. This is contrary to the theory on which the Trunk Line differential freight rates are based, namely, the **shorter distance is entitled to the lower rate.**

We offer the foregoing presentation as an illustration of discrimination and rebating made possible by the manipulation of accessorial charges or allowances. Similar manipulation produces like results in many other commodities, in many other localities throughout the United States.

The remedy for these illegal practices—and we believe it to be the only remedy—was pointed out sixteen years ago by so eminent an authority in matters of transportation as the late Col. Joseph D. Potts:

"We must have a separation of terminal and "transfer charges, from the road charges." [See **Exhibit E.**]

CONCLUSION.

We believe that certain Portland Cement interests by virtue of their ownership of a spur railroad are enjoying rebates.

We believe that the city of Philadelphia in all its varied industries is suffering because of an illegal discrimination growing out of preferential freight rates.

We believe that the freight rate on cement from Northampton, Pa., and nearby towns and places to Philadelphia is unduly high, or that the rate on cement from the same localities to Jersey City is inordinately low.

We believe that the maintenance of such conditions as are set forth in this presentation are contrary to the spirit and letter of the Interstate Commerce Laws as well as against

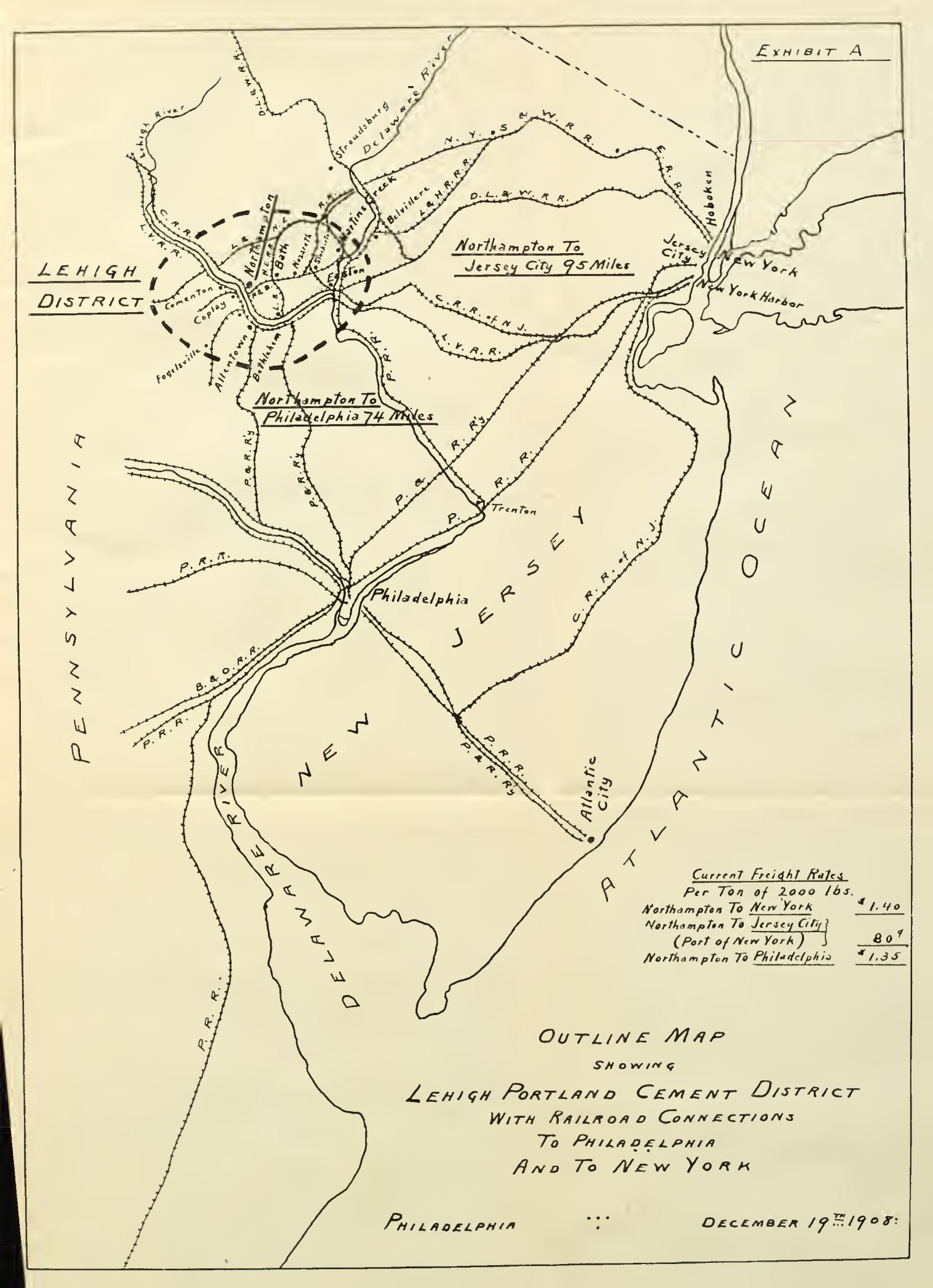
common fairness and justice and ought to be brought to an abrupt end.

We therefore respectfully petition your Honorable Body to make prompt and vigorous examination into the above conditions, and to issue upon your findings such order, or institute such necessary proceedings in the premises, as may in your judgment be best suited to relieve the city and port of Philadelphia from the undue and improper discriminations by railroads from which the city has been for years and now is suffering.

Respectfully submitted,

FRANK L. NEALL,
WARD W. PIERSON.

Philadelphia, December 19, 1908:



Current Freight Rates
Per Ton of 2000 lbs.

Northampton To New York	$1.40
Northampton To Jersey City (Port of New York)	80¢
Northampton To Philadelphia	$1.35

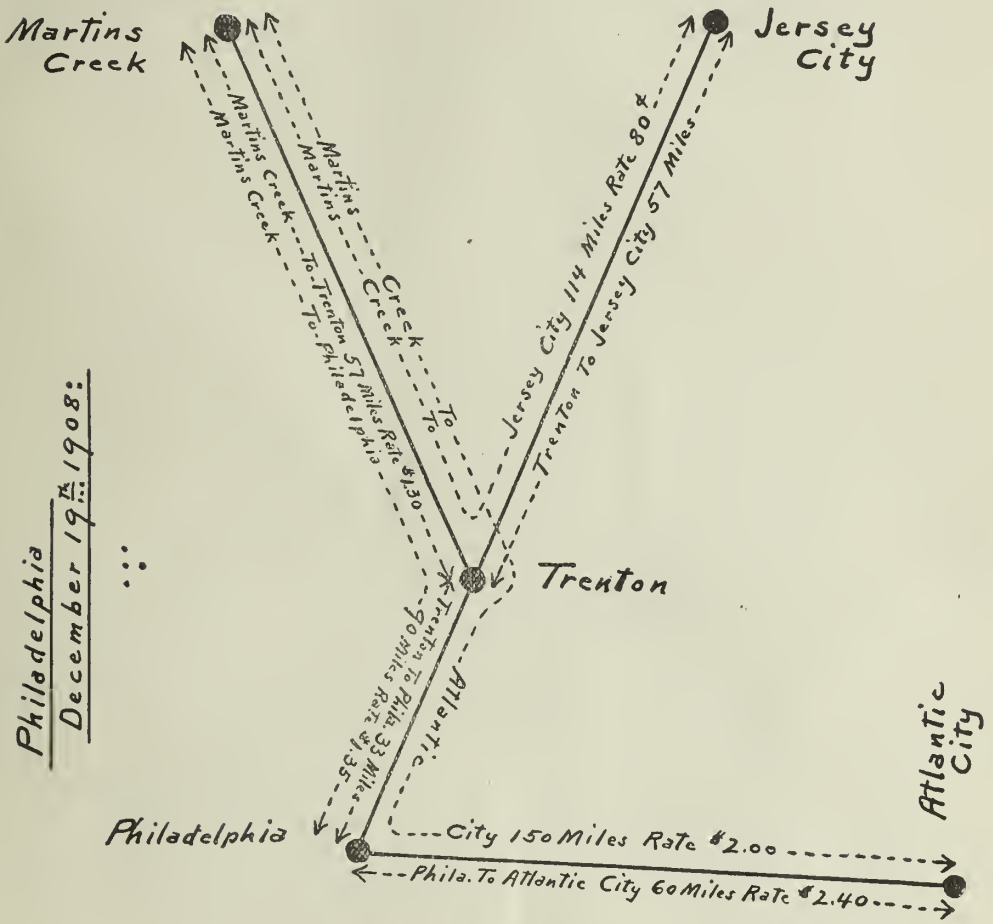
OUTLINE MAP
SHOWING
LEHIGH PORTLAND CEMENT DISTRICT
WITH RAILROAD CONNECTIONS
TO PHILADELPHIA
AND TO NEW YORK

PHILADELPHIA ... DECEMBER 19TH 1908.

EXHIBIT B:

RATES—REGIONS—ROUTES

ECCENTRICITIES OF FREIGHT RATES, ON PORTLAND CEMENT



RAIL—ROAD—'RITHMETIC.

Portland Cement, transported by the Pennsylvania Railroad, from Martin's Creek to Atlantic City, N. J., moves via Philadelphia.

Distance, Martin's Creek to Philadelphia, 90 miles, rate.....	$1.35 per ton.
Distance, Philadelphia to Atlantic City, 60 miles, rate	2.40 per ton.
Total distance, Martin's Creek to Atlantic City, 150 miles, rate.....	2.00 per ton.

90 miles + 60 miles = 150 miles.
$1.35 rate + $2.40 rate = $2.00 rate.

Portland Cement, transported by the Pennsylvania Railroad, from Martin's Creek, Pa., to Jersey City, moves via Trenton, N. J.

Distance, Martin's Creek to Trenton, 57 miles, rate	$1.30 per ton.
Add another 57 miles (distance Trenton to Jersey City), and the rate for entire distance. 114 miles, is reduced to	80c. per ton.

57 miles + 57 miles = 114 miles.
$1.30 rate + $1.30 rate = 80c. rate.

COMPARATIVE TABLE OF RATES OF FREIGHT ON PENNSYLVANIA PORTLAND CEMENT AND SUNDRY OTHER COMMODITIES.

PORTLAND CEMENT.

Freight Rate—Northampton to Jersey City (95 miles), per ton	$ .80
Freight Rate—Northampton to Philadelphia (74 miles), per ton	1.35
Discrimination against Philadelphia	**.55**

Contract for 4,500,000 bbls. (900,000 tons), for use in construction of Panama Canal, placed with the Atlas Portland Cement Co., Northampton, Pa., by U. S. Government.

At 55c. per ton **discrimination** against Philadelphia on this **one contract** amounts to..**$495,000.00**

Rate of freight on CEMENT, Martins Creek, Pa., to Trenton, N. J., 57 miles .....$1.30 per ton 2000 pounds.

Rate of freight on CEMENT, Martins Creek, Pa., to Jersey City, N. J., via Trenton, 114 miles.....80c. per ton 2000 pounds.

Rate of freight on CEMENT, Martins Creek, Pa., to Philadelphia, Pa., 90 miles .....$1.35 per ton 2000 pounds.

Rate of freight on CEMENT, Lehigh District, Pa., to Atlantic City, N. J., via Philadelphia, 150 miles .. .. 2.00 per ton 2000 pounds.

Rate of freight on CEMENT, Philadelphia, Pa., to Atlantic City, N. J., 60 miles.....$2.40 per ton 2000 pounds.

Rate of freight on CEMENT, Universal (Pittsburg), Pa., to Philadelphia, Pa., 351 miles... 2.00 per ton 2000 pounds.

Rate of freight on CEMENT, Universal (Pittsburg), Pa., to New York, N. Y., 441 miles... 2.40 per ton 2000 pounds.
(This rate includes harbor lighterage at New York, say 60c. per ton.)

Rate of freight on CEMENT, Lehigh District, Pa., to Buffalo, N. Y., 357 miles ..... 1.90 per ton 2000 pounds.

Rate of freight on COAL, Buffalo, N. Y., to Duluth, Minn. (by water), 985 miles .....30c. per ton 2240 pounds.

Rate of freight on IRON ORE, Superior (Duluth), Minn., to Cleveland, O. (by water), 834 miles ....70c. per ton 2240 pounds.

Rate of freight on CORN, Chicago, Ill., to Buffalo, N. Y. (by water), 900 miles .....40c. per ton 2240 pounds.

Rate of freight on WHEAT, Duluth, Minn., to Buffalo, N. Y. (by water), 985 miles.....60c. per ton 2240 pounds.

Rate of freight on IRON ORE, Superior (Duluth), Minn., to Buffalo, N. Y. (by water), 985 miles .....70c. per ton 2240 pounds.

Rate of freight on IRON ORE Philadelphia, Pa., to Bethlehem, Pa. (by rail), 57 miles....50c. per ton 2240 pounds.

Rate of freight on IRON ORE, Philadelphia to Pottstown, Pa. (by rail), 41 miles.....50c. per ton 2240 pounds.

Rate of freight on IRON ORE, Philadelphia, Pa., to Birdsboro, Pa. (by rail), 49 miles.....60c. per ton 2240 pounds.

Rate of freight on IRON ORE, Philadelphia, Pa., to Catasauqua, Pa. (by rail), 66 miles.....70c. per ton 2240 pounds.

Rate of freight on IRON ORE, Philadelphia to Harrisburg, Pa. (by rail), 112 miles.....70c. per ton 2240 pounds.

Rate of freight on IRON ORE, Philadelphia to Steelton, Pa. (by rail), 102 miles.....70c. per ton 2240 pounds.

Rate of freight on PIG IRON, Conshohocken, Pa., to Philadelphia (by rail), 13½ miles.....60c. per ton 2240 pounds.

Rate of freight on PIG IRON, South Bethlehem, Pa., to Philadelphia (by rail), 57 miles.....65c. per ton 2240 pounds.

Rate of freight on PIG IRON, Emaus, Pa., to Philadelphia (by rail), 62 miles.....75c. per ton 2240 pounds.

Rate of freight on PIG IRON, Wharton, N. J., to Philadelphia (by rail), 140 miles.....80c. per ton 2240 pounds.

Rate of freight on IMPORTED ORE, Philadelphia to Chester, Pa. (by rail)) 18 miles.....50c. per ton 2240 pounds.

Rate of freight on BARK, Philadelphia to Park Junction, Pa. by rail), 9 miles..... 56c. per ton 2240 pounds.

Rate of freight on PIG IRON, Philadelphia to Parryville, Pa. (by rail), 84 miles.....85c. per ton 2240 pounds.

Rate of freight on PIG IRON, New York, N. Y., to Wharton, N. J. (by rail—includes lighterage), 78 miles .....90c. per ton 2240 pounds.

Rate of freight on SPIEGELEISEN, New York to Rockaway, N. J. (by rail—includes lighterage), 87 miles.....$1.15 per ton 2240 pounds.

Rate of freight on ICE, Kennebec, Maine, to Philadelphia, Pa. (by water), 580 miles.....50c. per ton 2240 pounds.

Rate of freight on COAL, Lambert's Point to New London, Conn. (by water), 395 miles.....60c. per ton 2240 pounds.
Rate of freight on COAL, Philadelphia to Boston, Mass. (by water), 450 miles.....60c. per ton 2240 pounds.
Rate of freight on COAL, Philadelphia, Pa., to St. Johns, N. B. (by water), 665 miles .....85c. per ton 2240 pounds.
Rate of freight on COAL, Philadelphia to Halifax, N. S. (by water), 725 miles..... ..90c. per ton 2240 pounds.
Rate of freight on COAL, New York to Dartmouth, N. S. (by water), 610 miles.....90c. per ton 2240 pounds.
Rate of freight on COAL, Hampton Roads, Va., to Charleston, S. C. (by water), 412 miles.....$1.00 per ton 2240 pounds.
Rate of freight on COAL, Philadelphia to Havana, Cuba (by water), 1140 miles..... 1.10 per ton 2240 pounds.
Rate of freight on ORE, Mediterranean to Philadelphia-Baltimore (by water), 3700 miles..... 1.25 per ton 2240 pounds.
Rate of freight on COAL, Philadelphia to Tampico, Mexico (by water), 1954 miles..... 1.35 per ton 2240 pounds.
Rate of freight on SUGAR, Stettin, Germany, to New York (by water), 4600 miles..... 1.40 per ton 2240 pounds.
Rate of freight on COAL, Hoboken, N. J., to Camden, Maine (by water), 435 miles.....50c. per ton 2240 pounds.
Rate of freight on COAL, Port Reading, N. J., to Bangor, Maine (by water), 410 miles ...50c. per ton 2240 pounds.
Rate of freight on COAL, Perth Amboy, N. J., to Winter Point, Maine (by water), 435 miles...70c. per ton 2240 pounds.

Rate of freight on WHEAT, New York to Liverpool, England (by water), 3450 miles.....$1.20 per ton 2240 pounds.

Rate of freight on WHEAT, New York to Manchester, England (by water), 3545 miles..... 1.20 per ton 2240 pounds.

Rate of freight on CORN, New York to London, England (by water), 3775 miles ..... 1.20 per ton 2240 pounds.

Rate of freight on CORN, New York to Glasgow, Scotland (by water), 3423 miles ..... 1.20 per ton 2240 pounds.

Rate of freight on WHEAT, New York to Rotterdam, Holland (by water), 3769 miles ..... 1.30 per ton 2240 pounds.

Rate of freight on CORN, New York to Copenhagen, Denmark (by water), 4400 miles ..... 1.40 per ton 2240 pounds.

Rate of freight on SALT, Liverpool to Quebec, Canada (by water), 2970 miles ..... 1.13 per ton 2240 pounds.

Rate of freight on CHALK, Dunkirk, France, to New York (by water), 3593 miles..... 1.47 per ton 2240 pounds.

Rate of freight on COAL, Philadelphia to Savona, Italy (by water), 4300 miles..... 1.53 per ton 2240 pounds.

Rate of freight on SUGAR, Hamburg, Germany to New Orleans La. (by water), 5584 miles..... 1.50 per ton 2240 pounds.

EXHIBIT C:

TABLE INDICATING MEMBERSHIP OF BOARD OF DIRECTORS OF THE ATLAS PORTLAND CEMENT COMPANY OF PENNSYLVANIA, ALSO SHOWING INTER-RELATIONS OF CERTAIN OF SAID DIRECTORS WITH VARIOUS RAILROAD CORPORATIONS:

	Atlas Portland Cement Co.	Northampton & Bath R. R. Co.	Central Railroad of New Jersey	Delaware, Lackawanna & Western Railroad	Lehigh Valley Railroad Co.	Lehigh & Hudson River Railway	Lehigh & New England Railroad	Erie Railroad	Lehigh Coal and Navigation Co.	
1. J. Rogers Maxwell . .	President Director	President Director	Chairman Executive Committee Director	Director		Director				
2. George F. Baker . . .	Director		Director	Director	Director			Director		
3. Lewis A. Riley	Director					President Director	Director		Director	
4. J. R. Maxwell, Jr. .	Secretary Treasurer	Secretary Asst. Treas.								
5. Howard W. Maxwell .	Vice-Pres. Director	Treasurer								
6. H. L. Maxwell	Asst. Treas.									
7. Alfonso de Navarro . .	Vice-Pres. Director	Vice-Pres. Director								
8. H. J. Seaman . . .	Director Gen. Supt.	Director Gen. Supt.								
9. Henry Graves, Jr. . . .	Director	Director								
10. Fred'k G. Bourne	Director									
11. Geo. A. Morrison . . .	Director									
12. Isaac H. Clothier . . .	Director									
13. J. F. de Navarro . . .	Director									

Exhibit D

REPRINT OF DECISION OF THE INTERSTATE COMMERCE COMMISSION IN THE MATTER OF ALLOWANCES FOR TRANSFER OF SUGAR.

December 12, 1908.

OPINION NO. 742.

BEFORE THE

Interstate Commerce Commission

No. 1487.

IN THE MATTER OF ALLOWANCES FOR TRANSFER OF SUGAR.

Submitted December 7, 1908. Decided December 12, 1908.

John H. Marble for the Commission.

Clyde Brown for New York Central & Hudson River Railroad Company.

George F. Brownell for Erie Railroad Company.

William S. Jenney for Delaware, Lackawanna & Western Railroad Company.

R. Walton Moore for Old Dominion Steamship Company and Ocean Steamship Company of Savannah.

F. C. Dillard for Southern Pacific Company and Atlantic Steamship Lines.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

E. G. Buckland for United States Transportation Company.

George E. Blackwell for Lehigh Valley Railroad Company.

Ernest A. Bigelow for Federal Sugar Refining Company.

C. E. Dewey for Central Vermont Railway Company.

Frank L. Neall and *Ward W. Pierson* for Philadelphia interests.

REPORT OF THE COMMISSION.

65166—08

No. 1487.

IN THE MATTER OF ALLOWANCES FOR TRANSFER OF SUGAR.

Submitted December 7, 1908. Decided December 12, 1908.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
} Commissioners.

1. The Commission has jurisdiction to make an order in "any inquiry on its own motion in the same manner and to the same effect as though complaint had been made."
2. It is not a part of the carrier's duty to bear the expense of transfer of goods from the shipper to the carrier. For carriers to undertake to compensate shippers for performing services which the shippers are legally bound to do for themselves is for the carriers to violate the act.
3. The publication of gross-and-net rates would needlessly add to the complexity of tariffs. Wherever it is possible for carriers to file net rates, as such, it is their duty so to do.
4. The allowances here considered are rebates, and violate the law. No order is issued, but the carriers are expected to conform to the law without delay.

John H. Marble for the Commission.

Clyde Brown for New York Central & Hudson River Railroad Company.

George F. Brownell for Erie Railroad Company.

William S. Jenney for Delaware, Lackawanna & Western Railroad Company.

R. Walton Moore for Old Dominion Steamship Company and Ocean Steamship Company of Savannah.

F. C. Dillard for Southern Pacific Company and Atlantic Steamship Lines.

William Ainsworth Parker for Baltimore & Ohio Railroad Company.

E. G. Buckland for United States Transportation Company.

George E. Blackwell for Lehigh Valley Railroad Company.

Ernest A. Bigelow for Federal Sugar Refining Company.

C. E. Dewey for Central Vermont Railway Company.

Frank L. Neall and *Ward W. Pierson* for Philadelphia interests.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner:*

On March 11, 1908, the following order was made in this proceeding:

It having come to the attention of the Commission that certain carriers subject to the Act to Regulate Commerce are paying to shippers, in the city of New York and that vicinity, and elsewhere, certain allowances for the transfer of sugar from the refinery or warehouse to the car, which may be in violation of law,

It is thereupon ordered:

1. That a proceeding of investigation be, and it is hereby, instituted.

2. That the New York Central & Hudson River Railroad Company, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, the Pennsylvania Railroad Company, the Central of New Jersey Railroad Company, the Philadelphia & Reading Railway Company, and the Baltimore & Ohio Railroad Company be made defendants to said proceeding.

3. That said defendants be required to appear at such time and place as may be hereafter designated, and to state fully all facts and circumstances touching the payment of said allowances, and also to show cause why the same should not be declared unlawful.

4. That a copy of this order be served upon each of the above-named defendants, and that this proceeding be conducted with a view to making an order directing the above defendants to cease and desist from the payment of such allowances if the same are found to be unlawful.

Thereafter the above order was duly served upon all of the carriers named therein.

On May 23, 1908, an additional order was made, as follows:

Good reasons appearing therefor, it is hereby ordered:

1. That the following carriers be made defendants in said proceeding in addition to carriers named in general order of March 11, 1908: Central Vermont Railway, Ocean Steamship Company of Savannah, Old Dominion Line, Mallory Steamship Company, Southern Pacific Company, Atlantic Steamship Lines, United States Transportation Company, Hudson Navigation Company (People's Line), and Clyde Steamship Company.

2. That said additional defendants be required to appear at such time and place as may be hereafter designated, and to state fully all facts and circumstances touching the payment of allowances for the transfer of sugar referred to in the general order made herein on March 11, 1908, and also to show cause why said allowances should not be declared unlawful.

3. That a copy of this order and also a copy of the order of March 11, 1908, be served upon each of the above-named additional defendants.

Thereupon, the order of March 11, 1908, above set forth, as well as the order of May 23, 1908, above set forth, was duly served upon the carriers named in said second order.

On June 15, 1908, a hearing in the above-entitled matter was held at the rooms of the Commission pursuant to notices duly given to all the defendants.

At this hearing witnesses called by the Commission were examined and both oral and documentary evidence introduced. Also a number of witnesses were called upon request of the attorneys representing various defendant transportation companies. Opportunity was given to all concerned to produce witnesses or documentary testimony, and all evidence offered was received.

On June 29, 1908, counsel were heard in argument, and briefs were subsequently filed, which have been carefully considered.

There is but slight conflict in the testimony relative to the history of these allowances. It conclusively appears that in their origin they were incidental to a general plan for discriminating rates and rebates. The testimony shows that the payment of the allowances first began, so far as New York City and vicinity is concerned, about the year 1885. It was stated by a witness conversant with the facts, by reason of his connection with the American Sugar Refining Company, that they were first paid to equalize a rebate then being given at

Philadelphia. They were not always called cartage allowances, as the witness above mentioned testified:

Before it was illegal we had straight out-and-out rebate, and generally called it so.

According to this witness the amount of the allowances was fixed as a compromise. He testified:

I tried to get my 4⅛ cents, the same amount that was allowed in Philadelphia, and I could not make it. I took what I could get; 2 cents is all I could get.

These allowances were contemporaneous with many arrangements for rebates upon shipments of sugar. In some instances a lump rebate of a larger sum than that actually allowed for transfer was arranged between rail carriers and the establishment making the largest shipments of sugar from New York, and in consideration of such rebate it was agreed that no transfer allowance would be claimed. Again, when certain western lines refused to prorate in the customary transfer allowance, this was reduced by the amount of the portion so withheld. As will hereafter appear, these allowances were secret, not being published until after the enactment of the Elkins Act, in 1903. Hereinafter the words "transfer allowance," or "allowance," will be used.

In 1898 a new arrangement involving this transfer allowance was made between the railways having membership in the Trunk Line Association and the sugar refinery interests, represented by W. A. Havemeyer and Lowell M. Palmer. A "personal" circular of the Trunk Line Association, dated March 31, 1898, relating to this arrangement was produced at the hearing. It reads as follows:

TRUNK LINE ASSOCIATION.

Commissioner's Office.

Grand Trunk Railway,	Lehigh Valley R. R.,
New York Central & H. R. R. Co.,	Central R. R. of New Jersey,
West Shore Railroad,	Philadelphia & Reading Ry.,
New York, Ontario & Western Ry.,	Pennsylvania R. R.,
Erie Railroad,	Baltimore & Ohio R. R.
Delaware, Lackawanna & W. R. R.,	

J. F. Goddard, Commissioner, 143 Liberty Street, New York. March 31, 1898.

Nathan Guilford, G. T. M., N. Y. C. & H. R. R. R. Co.
Percy R. Todd, G. T. M., West Shore R. R.
H. C. Hicks, G. F. A., D., L. & W. R. R.
Frank Harriott, G. F. T. M., Erie Railroad.
W. H. Joyce, F. T. M., Pennsylvania R. R.
H. H. Kingston, G. T. M., Lehigh Valley R. R.
C. S. Wight, M. F. T., Balto. & Ohio R. R.
J. C. Anderson, G. F. A., N. Y., O. & W. Ry.
B. H. Ball, G. F. A., Phila. & Read. Ry.
J. Lowrie Bell, G. T. M., C. R. R. of N. J.

Personal.

At meeting of the Special Westbound Committee today all members were present except Messrs. Percy R. Todd and H. C. Hicks, both of whom were authoritatively represented by Mr. N. Guilford.

Full consideration was given to the subject of a division of the westbound sugar traffic from New York and Philadelphia, and the following action was unanimously adopted:

For the purpose of maintaining stability in rates on westbound sugar shipments and of securing to each Trunk Line an equitable proportion of the traffic, it is

Resolved, That, taking effect April 1, 1898, the aggregate tonnage of sugar refined in New York and Philadelphia and consigned to or beyond Trunk Line western termini be divided in the following proportions between the several roads named:

N. Y. C.	20.39
Erie	19.01
P. R. R.	20.59
B. & O.	8
W. S.	8.42
L. V.	10.39
D., L. & W.	4
N. Y., O. & W.	2.1
C. of N. J.	2.20
Via New London	2.4
C. & O.	2.5
	100.00

Provided, That the American Sugar Refining Company will agree to route their shipments in such manner as to carry out this agreement, so that each road shall receive its stated proportion of the aggregate sugar tonnage;

And provided further, That the American Sugar Refining Company will give assurances that their product to be melted in New York and Philadelphia, respectively, shall be as nearly as practicable in the proportions of two-thirds of the New York and one-third in Philadelphia.

It is also understood that the Philadelphia & Reading Company shall be assigned 6.1 per cent. of the total sugar tonnage of the two cities; and

said tonnage shall be charged against such connections, respectively, as though it had originated with such connection.

It is further understood that if from fire or any cause the production at Philadelphia should be less than is contemplated herein, and the Philadelphia roads are on that account required to take any considerable portion of their allotment out of New York, they shall have the right to bring up for equitable consideration the question of the inclusion of such shipments in the New York tonnage statement.

Further resolved, That Messrs. Guilford, Wight and Joyce be appointed a committee to present this resolution to the American Sugar Refining Company, with a view of obtaining its concurrence therein.

A communication was received from the board of managers, suggesting that the committee meet the representatives of the southern water routes at this office at 2 p. m., Tuesday, April 5, which was agreed to.

Yours respectfully,

_____ _____,
Chairman.

It fully appears that the payment to refineries of a uniform allowance of 2 cents for transfer was understood by the railroads and by Mr. Havemeyer to be consideration for the maintenance of the pool percentages by the American Sugar Refining Company.

That is to say, prior to 1898 the allowance was a rebate to equalize certain Philadelphia rebates. In 1898 it was compensation for the maintenance of an unlawful pool. Today it is the same allowance, but it is insisted that it has a new reason for being, viz., transfer.

In 1903, upon the passage of the Elkins Act with its penalties for violations of the act to regulate commerce, the railroads in the pooling agreement very generally ceased to pay the transfer allowance, holding the same to be unlawful. Thereupon the American Sugar Refining Company ceased to protect the pool percentages in its shipments of sugar, holding that the pool and the transfer allowance were related as service and consideration. After about sixty days the allowance was resumed by the railroad companies and made retroactive for the shipments forwarded during the time of its discontinuance. Thereupon the American Sugar Refining Company again proceeded to protect the pool percentages. It should be noted that the pooling agreement covered all shipments from New York and Philadelphia, whether made by the Havemeyer

interests or by the independent refineries. A daily report of all shipments of sugar was made by the Trunk Line Association to the shipping agent of the American Sugar Refining Company. As that concern was the largest shipper at both cities, it was able, and by the agreement was bound, to so route its shipments as to correct any departure from the agreed percentages caused by the independent routing of its competitors.

The physical division of sugar out of New York and Philadelphia continued to be made by the Havemeyer interests until January 1, 1905. The old divisions appear still to have some weight with the present traffic manager of the American Sugar Refining Company, but the evidence cannot be said to show the continuance of the pool as an agreement between the trunk lines after the end of the year 1904.

This transfer allowance was first published and filed with the Commission in 1903, after the passage of the Elkins Act. From that time until the fall of 1906, after the passage of the amended act to regulate commerce, it was referred to by tariffs of the various carriers. In 1906, however, the Pennsylvania Railroad Company, the Baltimore & Ohio Railroad Company, the New York, Ontario & Western Railroad Company, the Central of New Jersey Railroad Company and the Philadelphia & Reading Railway Company generally withdrew the allowance, being advised by their counsel that it was illegal. The New York, Ontario & Western, upon discontinuing the allowance, reduced its tariff rate by an equal amount. No one of the above carriers is now making these payments as an initial line. It will be noted, therefore, that the allowance is not being paid at Philadelphia by any rail carrier reaching that port.

It thus appears that this transfer allowance on sugar from refineries at New York and Philadelphia was, for not less than eighteen years after its establishment, unpublished and unfiled. It also appears that for the period from April 1, 1898, to January 1, 1905, the allowance was incidental to a scheme to maintain a pool in violation of the fifth section of the act.

It is insisted, however, that as the allowance is now published and filed, and as no proof is produced to show that a

pool is now being maintained, the allowance must be regarded as entirely legal. The question thus presented can best be answered after an analysis of the varying provisions for this allowance now contained in the published tariffs of carriers subject to the act. It will be necessary to consider only the initial carriers in this regard, it being noted that hundreds of connecting carriers join in each of these tariffs, concurring in their provisions and bearing shares of the allowance proportionate to their shares of the through rates. These tariffs may be summarized as follows:

1. Those which offer an allowance for the transfer of sugar from refineries. The tariffs of the Erie Railroad Company (I. C. C. 5764 and 6707) are typical of this class. Their language is:

> Rates named herein on sugar will include transfer charge of 2 cents per 100 pounds from refineries to cars at New York and Brooklyn stations, Jersey City, N. J., and Edgewater, N. J.

Other tariffs in this class make the rates from Brooklyn, N. Y., Jersey City, N. J., and Yonkers, N. Y., applicable from sugar refineries in these cities, "subject to an allowance of 2 cents per 100 pounds for transfer from refineries to cars." These tariffs are intended to and do accomplish the same result as the tariffs of the Erie Railroad above quoted. The carriers having tariffs identical in effect with the above are the Lehigh Valley Railroad Company, National Dispatch-Great Eastern Line, the Canada Atlantic Transit Company and the Rutland Railroad Company.

2. Those which offer transfer allowance without restricting such allowance to shipments from refineries. The Delaware, Lackawanna & Western Railroad Company, and the New York Central & Hudson River Railroad Company and West Shore Railroad Company are in this class. Prior to March 2, 1908, the Delaware, Lackawanna & Western Railroad restricted the allowance to shipments from refineries. On that date, however, this rule was changed to read as follows (I. C. C. 4773):

> *Allowance—Transfer of Sugar—Allowance for Transfer on Sugar in Carloads.*—On shipments of sugar in carloads delivered at New York, Brooklyn, N. Y., Jersey City, or Hoboken stations, an allowance of two

(2) cents per one hundred (100) pounds will be made for transfer, to be deducted from through rate when destined to western termini of the trunk lines or points west thereof.

On September 15, 1908, the Delaware, Lackawanna & Western Railroad Company again amended the above rule by an addition which makes the payments applicable also on shipments of sugar in carloads "from all points within the lighterage limits, except on traffic destined to or via the Baltimore & Ohio Railroad Company."

Effective October 1, 1908, the New York Central & Hudson River Railroad Company, and the West Shore Railroad Company on all-rail shipments to points west of Trunk Line territory published tariffs, making an allowance of 2 cents per 100 pounds on sugar in carloads for delivery to cars or stations of these railroads at New York, Brooklyn and Yonkers, N. Y., and Jersey City (Warren Street), N. J. (N. Y. C. & H. R., I. C. C., B–6043 and B–6354; West Shore, I. C. C., B–2353, B–2567). On November 1, these all-rail tariffs of the New York Central and Hudson River and the West Shore Railroad Companies were still further amended to make the allowance "for delivery to cars" applicable on all shipments from Yonkers and from within the lighterage limits of Greater New York. Also effective October 27, 1908, the two railroads last above mentioned amended their lake-and-rail tariffs to points west of the Mississippi River, making the allowance in the form last above described.

3. Those which offer an allowance upon all shipments of all commodities from certain designated districts, but make no allowance on the same commodities when from other districts. The Clyde Steamship Line, the Mallory Steamship Company, the Morgan Line and the Old Dominion Steamship Company are all within this class. These steamship lines, doing business out of the port of New York in connection with rail lines reaching southern Atlantic ports and competing with the Trunk Lines for tonnage to points beyond Trunk Line territory, have an elaborate scheme of allowances for delivery of freight to their wharves in New York City. These allowances so far as they are by the tariffs made applicable on shipments of sugar from refineries in or near New York, include 2 cents

per 100 pounds for transfer in addition to a lighterage allowance. The entire allowance is generally published in a lump sum, only the Old Dominion Steamship Company distinguishing that portion which is paid for transfer. It is the testimony, however, that the allowances made by the steamship lines include an allowance of 2 cents for transfer of carload shipments of sugar and that therefore the result reached by the tariffs of the steamship lines is the same, so far as the transfer allowance is concerned, as the result reached by the tariffs considered in paragraph 1, above. That is to say, the steamship lines making lump-sum allowances estimated lighterage and cartage separately, and in the lump sum given is included a 2-cent allowance for transfer, intended, in the competition for business, to meet and balance the transfer allowance given by the rail carriers.

It appears from the testimony, and is admitted in the brief filed on behalf of certain of the carriers, that of the 1,330,000,000 pounds of sugar shipped in 1907 from the refineries at Brooklyn, Jersey City and Yonkers, upon which the allowance for cartage here considered was paid, only 70 per cent. can possibly be said to have been carted. That is to say, of the total amount paid for cartage of sugar at New York City in 1907 ($266,000), the sum of $79,800 was paid upon shipments which were not carted, but were received by the carriers at the shipper's door.

On this point counsel for the carriers say, with much frankness:

> In the case of some of the refineries the transfer service does not involve cartage. It consists of hand trucking and loading from the platforms of the refineries into the cars. While there is some service performed here for which these refineries are entitled to compensation, it is, of course, not so extensive as that performed by the refineries that cart their product, and the allowance of 2 cents per 100 pounds doubtless somewhat exceeds the cost of such service. However, if an allowance is made to the refineries that cart their product, the other refineries are entitled to some allowance also.

Counsel for those carriers joining in the brief on file challenge the jurisdiction of the Commission to deal with the situation presented by their tariffs except by criminal prosecution, saying:

We, of course, do not question the propriety or the jurisdiction of the Commission to investigate on its own motion, without formal complaint by anyone, the legality of the payment of the allowance in question, to formally determine such question, and in the event that it finds the payment of such allowance to be illegal, to transmit its opinion to the proper United States district attorney, with request to institute prosecutions against the carriers to enforce the law. This practice has been, as we are, of course, aware, repeatedly adopted by the Commission in the past. We do, however, question the right of the Commission in an investigation of this nature, without the filing of a complaint, without any formal answer by the carriers, without a full hearing, to make an order requiring the carriers to cease and desist from such payment. Nor are we aware of any case where the Commission has made an order of such nature.

The jurisdictional question raised should be first considered. The admissions of counsel's brief help to shorten this opinion in that regard. The brief states that the allowance is prompted by "traffic reasons," and that "the traffic reasons for the allowance are well known to the Commission from the statements of the traffic executives and from testimony at the hearings." It appears from this admission and from the facts hereinbefore recited, that full hearing has been given, and that the case on behalf of the carriers has been fully presented. The point urged, therefore, is that the Commission lacks jurisdiction to forbid the further payment of the allowance because this proceeding was initiated by the Commission instead of by a person making a formal complaint to the Commission. A reference to section 13 of the act to regulate commerce furnishes the answer to this contention. That section provides that the Commission "may institute any inquiry upon its own motion in the same manner and to the same effect as though complaint had been made." It therefore appears that the authorship of this proceeding furnishes no ground for attack upon the Commission's jurisdiction. Moreover, as will hereafter appear, our view of the nature of this payment necessitates the conclusion that it is forbidden by the act itself, which act is binding upon the carriers here, even though no order be issued by the Commission.

All the tariffs purport to make the allowance as compensation for transfer. It necessarily follows that if the allowance is to be sustained the transfer of goods to the possession of the carrier must be held to be the carrier's duty, for which the shipper making the transfer is entitled to compensation.

Such is not the law, and the first to resist an attempt to impose such duty upon the carriers would be the carriers themselves. Within the present year this Commission has decided at least two cases in favor of carriers involved in this proceeding and has held that the delivery of goods to a carrier and the receipt of goods from a carrier are duties devolving upon the shipper, for which the carrier cannot be compelled to pay. For carriers to undertake to make to shippers allowances based upon the performance by the shippers for themselves of services which they are legally bound to do for themselves is for the carriers to violate the act to regulate commerce. *Wight* vs. *United States*, 167 U. S., 512; *Chicago & Alton Ry. Co.* vs. *United States* (C. C. A.), 156 Fed. Rep., 558; *General Electric Co.* vs. *N. Y. C. & H. R. R. Co.*, 14 I. C. C. Rep., 237; *Solvay Process Co.* vs. *D., L. & W. R. R. Co.*, 14 I. C. C. Rep., 246.

Within the present year all of the carriers in this proceeding, except the boat lines, have acted under tariffs which restricted the allowance to shipments from refineries only, and the boat lines have acted under tariffs which restricted payments to shippers coming from certain designated territory to their wharves. Of course, we note the argument that there are no carload shippers of sugar in New York or vicinity except the refineries. We can understand how this must be so when such allowances as these are made upon shipments from refineries only. If rates were made absolutely equal to all shippers, whether refineries or others, there might be other shippers than refineries.

Moreover, an allowance that is really paid for transfer should be equal to the transfer expense in each case. Here the carriers, on the basis of an assumption of transfer, pay some, if not all, the shippers more than their transfer expense. From the record it appears that in 1907 there was shipped from the refineries at Brooklyn, Jersey City and Yonkers to points west of trunk line territory 1,330,000,000 pounds of sugar. Upon this amount the allowance of 2 cents per 100 pounds was paid. It further appears from the record and is admitted by all counsel filing briefs that 30 per cent. of the

above tonnage was received by the carriers at the store doors of the shippers, and therefore was not the occasion of transfer expenses to the shippers. It thus appears that the carriers in this proceeding in the year 1907 paid to refineries shipping sugar from New York and vicinity for transfer of their shipments to the possession of the carriers $266,000. It further appears that 399,000,000 pounds of the sugar upon which transfer allowance was so paid was received by the carriers at the store doors of the shippers, the sum of $79,800 being nevertheless paid to these shippers for transfer. It is not considered that any criticism of the tariffs or the practice under them need go further than this bare statement of the results.

No one of the carriers in this proceeding furnishes cartage to shippers of sugar. All of them undertake to pay shippers for furnishing such cartage for themselves. Having thus undertaken to regard a service outside of transportation as a service to the transportation company, to be paid for out of the transportation rate, the carriers also furnish store-door reception to one-third of the shipments by means of floats and switch tracks, thus making cartage of such shipments not only superfluous but impossible. Still, the payment of $79,800 is made to these shippers for performing for themselves a service which the carriers have made unnecessary and which is not performed.

It is urged by all of the carriers filing briefs that the tariff filed by the Delaware, Lackawanna & Western Railroad should be taken by the Commission as the publication of a gross and net rate. Thus, on page 2 of their brief, it is said, referring to Rule 51 in D., L. & W., I. C. C., 4774, hereinbefore quoted:

> Under the above forms of tariff, therefore, the Lackawanna Company quotes its gross carload rates on sugar to western points, less an allowance of two cents per 100 pounds to all carload shippers delivering sugar at any of its New York stations, or tendering sugar for shipment anywhere within the litherage limits of New York Harbor. As the allowance is therefore made to all shippers alike, under all circumstances, and the shipper always pays the freight, the effect thereof is a gross and net rate to all shippers. The legal rate under the tariffs for the transportation of carload westbound sugar is therefore two cents under the rates named in the commodity tariff cited, to the western termini of the Lackawanna Company and points beyond.

This is an attempt to raise a question which is not presented by the facts. As published, all the tariffs making the allowance expressly state that it is made for "transfer." Moreover, up to March 2, 1908, the "net rate" was granted to shipments "from refineries" only. On that date, the Delaware, Lackawanna & Western published its rule, by which the "allowance for transfer of sugar" was made applicable to all shipments delivered at New York, Brooklyn, Jersey City or Hoboken stations. This tariff has since been amended by making the allowance payable on all shipments from within lighterage limits, whether delivered at the terminals by the shippers or not, as well as upon shipments from all points whatsoever when delivered at the terminals. The New York Central & West Shore lines have filed tariffs, applicable to shipments to points east of the Mississippi River, effective October 1, 1908, which offer the allowance to all shipments delivered at its stations in Greater New York and Yonkers, and on November 1, 1908, these tariffs were further amended to offer the allowance on shipments from "all points in the lighterage limits," as does the present Lackawanna rule. The New York Central & Hudson River Railroad Company and the West Shore Railroad Company confined the allowance on rail-and-lake shipments to points west of the Mississippi to shipments from refineries until October 27, 1908. The method pursued by the water carriers has already been described.

All the other tariffs making the allowance restrict it to shipments "from refineries."

If counsel are right in saying that this is simply a gross and net rate, then all the rail carriers, within the present year, have violated the act by restricting their net rates on sugar to shippers from refineries, quoting to all other possible shippers a rate 2 cents per 100 pounds higher than this net rate; while the water carriers have restricted the allowance to shippers from certain districts only.

Even if the question of allowing gross and net rates were presented, it is apparent that such method of publication would be rarely allowable. If carriers can publish rates in

one tariff and discounts or allowances from such rates in another tariff, or even in another page of the same tariff, the present difficulties of shippers and rate clerks will be multiplied.

Wherever it is possible, as it is here, for carriers to file a net rate as such, we are clear that this is their duty.

The transfer allowance here considered is, by every test afforded by the law, a rebate. It seems to be given with a purpose of reducing the rates for transportation of sugar from New York, being called a "transfer allowance" to conceal the fact that such reduction is made. It is not a payment for any actual service rendered to the carriers, and from every point of view, whether given on shipments from refineries only or to the public generally, and whether specifically named in the tariffs or included in but concealed in a lighterage or cartage allowance, it is unlawful in and of itself.

No order will be made at this time, but the Commission will expect the carriers in question at once to conform their tariffs and practices to the principles here announced. If this is not done, the Commission will take such steps to enforce compliance with its views in this connection, either by an order in this proceeding (jurisdiction of which is reserved for that purpose) or by such other means as it may deem advisable in the premises.

EXHIBIT E:

ACCESSORIAL ALLOWANCES.

CREATION — OPERATION — ELIMINATION.

It is obvious that no single railroad, and perhaps not all the railroads combined, could, unaided by The Interstate Commerce Commission, safely inaugurate the radical change imperatively demanded in the present practice of making allowances out of freight rates.

One of the underlying thoughts, in the Presentation to which this exhibit is appended, is to assist in providing practical relief to the railroads, and to disenthrall them from the insidious and gradually established burden which, for many years, has placed them at the mercy of certain large private corporations. These corporations have persuaded them, by a macing process, to yield up a large portion of their freight revenues. We refer to the accessorial charges, expenses, and allowances, demanded of the railroads, not only at New York, but at many of the important traffic centers throughout the United States.

As the same end was kept in view in presenting our Brief, In the Matter of Allowances for Transfer of Sugar (I. C. C., Case No. 1487), it may be pertinent to recall certain facts which were testified to recently, under oath, in that case, before The Interstate Commerce Commission. These facts illustrate, in a most striking manner, the vicious effects of accessorial allowances upon the net revenue of the railroads, and they are therefore of vital interest in connection with this Cement case.

It was testified that prior to December, 1906, 2c. per 100 pounds cartage was allowed by the Pennsylvania Railroad to Sugar Refineries in Brooklyn and elsewhere. It was also testified (Docket No. 1487, pp. 84, 90, and 94) that the Pennsylvania Railroad allowed 4⅕c. per 100 pounds, for floatage or lighterage, and in addition 1⅘c. per 100 pounds

when the Brooklyn Eastern District Terminal Co. sent to Jersey City for the empty cars. The allowances thus made amounted to 8c. per 100 pounds, or 47% of the published rate of 17c. per 100 pounds, New York to Cleveland, Ohio (623 miles). This 47% was paid out of the tariff rate to the Sugar Trust and its allied interest, the Brooklyn E. D. Terminal Co., for alleged services before the sugar reached the rails of the Pennsylvania Railroad Co., at Jersey City, N. J.

It was also shown that the relations of the main refinery of the American Sugar Refining Co., Brooklyn (Havemeyer & Elder plant), the Pennsylvania Railroad Co. freight station, and the Brooklyn E. D. Terminal Co. railroad yard and docks, are in the relation of A, B and C—A being the Sugar Refinery, B being the Pennsylvania Railroad freight station, and C being the Brooklyn E. D. Terminal Co. yard. Consequently every truck load of sugar hauled from "A" passed "B" (Pennsylvania Railroad freight station) and went beyond it to "C" (Brooklyn E. D. Terminal Co.), through which latter company the Pennsylvania Railroad was forced to receive the sugar at Jersey City as eventually tendered to it on floats at that point. This arbitrary action of the Sugar Trust in insisting on the receipt of sugar at Jersey City, instead of at the natural point of receipt, viz., at the freight station of the Pennsylvania Railroad, located between the refinery and the Brooklyn E. D. Terminal yard, demonstrates the paramount influences exercised by the shipper of sugar in designating the point where the traffic shall be received.

This is an extreme, but true, illustration of actual facts. The illustration shows the possibilities of the accessorial system, when, as in the above case, the railroad can be forced to receive its shipments by expensive and indirect routes, even to the extent of ignoring its own adjacent and convenient terminals, and be forced to allow the shipper (and as in this case, interests which are substantially identical with the shipper), 47% of the published freight rate, before the merchandise reaches the rails of the railroad company. Can better proof be found of the assertion in Point III of our Brief in the Sugar case "*that accessorials included as an integral*

part of a rate of freight, deprive the railroad company of revenue properly belonging to it."

The present (cement) case, is a parallel case and shows the logical outcome of the accessorial system. The published rate of freight on cement from Northampton to New York is $1.40 per ton. The published rate of freight on cement from Northampton to Philadelphia is $1.35 per ton. On its face this appears reasonable, but the published rate of $1.40 per ton to New York, includes an allowance for lighterage of 60c. per ton, leaving the actual net rate for rail transportation 80c. per ton.

The requirements of large shippers and purchasers of cement (perhaps for export), forced the railroad companies to apply this net rate of 80c. per ton to shipments consigned to Jersey City. As soon as this rate was published, the gross discrimination against Philadelphia, which had been concealed in the form of accessorial allowances out of the $1.40 per ton rate, became at once apparent. The public could no longer be blinded by the statement that the New York rate was $1.40 per ton, and the Philadelphia rate was $1.35 per ton, because the comparison was now between the published rate of 80c. per ton to Jersey City and $1.35 per ton to Philadelphia.

Again, we suggest that this is proof of the assertion in Point II of our Brief in the Sugar case *"that accessorial charges or expenses or allowances included as an integral part of a rate of freight, necessarily produce discrimination."*

It also bears out the remarkable statement deliberately and publicly announced by eminent Counsel for New York Trunk Line Railroads in that case, that accessorial charges or allowances are used for the purpose of overcoming the natural advantages and the nominal differentials accorded to the port of Philadelphia (page 9, Brief of Counsel, New York Trunk Line Railroads).

> "The result is that the carriers at New York, in order to compete with the carriers at Philadelphia, in so competitive a traffic as sugar, must bear the expense of the delivery of such traffic to their terminals. With reference to most commodities, we have found that if we bear the lighterage expense, we have reasonably equal-

ized the manufacturers of the two places. It has been found, however, that with respect to sugar, such concession would be insufficient to protect the New York sugar interests in competition with the Philadelphia refineries."

Referring once more to our Brief in the Sugar case, we asserted, Point V, "*that as the accessorial requirements of shippers or consignees vary in almost every individual case, questions growing out of conditions similar in principle to those now before the Commission, will be multiplied to such an extent that the Commission will soon be overwhelmed by a vast number of complaints.*"

It has already become apparent that an immense number of cases involving discrimination produced by accessorial allowances will be brought to the attention of the Commission.

The system of accessorial allowances applies not only to sugar and cement, but also to almost every important commodity in almost every locality throughout the country. For many years there has been an increasing and insistent demand upon the railroads for lower freight rates, and, at the same time, for added facilities. This demand frequently came from parties controlling such large volumes of traffic that they could practically dictate their own terms. Concession has followed concession until, as shown in the Sugar case, the allowances have, in some instances, amounted to 47% of the total published freight rate.

It is absurd to suppose that railroads willingly give away a large part of their earnings. Railroads, like other business concerns, are organized for the purpose of making money. It is no easy problem for railroads, in these days of increasing expenses and decreasing rates, even to make both ends meet, to say nothing of earning a profit for shareholders. The practice of giving concessions, either in the form of allowances out of freight rates, or of added facilities or privileges, which increase the cost and value of the services rendered by the Railroad without increasing the rates of freight, has grown up gradually and insidiously. The responsibility for the growth of this practice rests not so much upon the railroads or upon their customers, as upon conditions surrounding each

of them. This practice has become so firmly established as a factor in the cost of so many commodities and in the conditions of so many industries, that the railroads are powerless to make any radical change on their own initiative.

The serious import of this problem of accessorial allowances has yet to be realized. To the railroads it means a frightful sacrifice of revenue, and an additional complication of the already difficult problem of rate-making.

To the public it means that allowances or privileges granted to one person or to one community must be proportionately paid for by some other person, or some other community. A discrimination in favor of one is always a discrimination against another.

The rate on cement from Northampton to Jersey City (95 miles) is 80c. per ton. Does this involve a sacrifice of revenue to be paid for by some other community?

Philadelphia pays $1.35 per ton, Northampton to Philadelphia (74 miles).

The net rate on sugar, Jersey City to Cleveland, Ohio (623 miles), was 9c. per 100 pounds (New York rate 17c. per 100 pounds, less accessorial allowance, 8c.). Did this involve a sacrifice of revenue to be paid for by some other community than New York City, or by some other commodity than sugar?

Philadelphia has unquestionably for years been compelled to pay for sacrifices of this character.

If by availing of this macing process such a great corporation as the Pennsylvania Railroad Company can be persuaded to contribute 47% of a given total freight rate to a single manufacturing corporation, how can it reasonably be expected that railroads, weaker, and more susceptible to persuasive tactics, can withstand such approaches?

The Interstate Commerce Acts are intended to stop discrimination and rebating, and to insure fair, equitable, and impartial treatment to all. We believe that the decision of the Interstate Commerce Commission in the Sugar case is a long step in this direction, and that the same principle applied to other accessorial allowances will be of immense additional benefit, both to the railroads and to the public.

Special facilities should be paid for by those who are benefited thereby, and every person or community should enjoy the advantages or suffer the disadvantages of their own particular location or conditions. No one will be more benefited by the application of this principle than the railroads. No one can object to the application of this principle except those who are receiving special privileges or actual rebates at the expense of other people, or of other communities.

Philadelphia, December 19, 1908:

DECISION

OF THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

Allowances for Transfer of Sugar

No. 1487 (Opinion No. 742)

Decided December 12, 1908

In connection with the cement situation, attention is invited to the annexed extracts from the opinion, of the Commission.

The opinion, in full, is reprinted within.

> **"For carriers to undertake to make to "shippers allowances based upon the per- "formance by the shippers for themselves "of services which they are legally bound "to do for themselves, is for the carriers to "violate the act to regulate commerce."**

"The transfer allowance here considered is, by every "test afforded by the law, a rebate. It seems to be given "with a purpose of reducing the rates for transportation of "sugar from New York, being called a 'transfer allowance' "to conceal the fact that such reduction is made. It is not a "payment for any actual service rendered to the carriers, and "from every point of view, whether given on shipments from "refineries only, or to the public generally, and whether "specifically named in the tariffs or included in but concealed "in a lighterage or cartage allowance, it is unlawful in and "of itself."